See Chee How & Anor v Pengerusi Suruhanjaya Pilihan Raya Malaysia (Election Commission of Malaysia)

HIGH COURT (KUCHING) — APPLICATION FOR JUDICIAL REVIEW NO KCH-13NCVC-3/1 OF 2015
YEW JEN KIE J
12 JUNE 2015

Civil Procedure — Judicial review — Application for — Application by registered voter and electoral candidate — Applicant aggrieved by passing of bill — Notice on 'Proposed Recommendation for Federal and State Constituencies in State of Sarawak as Reviewed by the Election Commission in 2014' — Notice placed in newspapers — Manner of publication — Whether appropriate — Whether there was insufficient information in notice on effect of proposed recommendation

The first applicant was a registered voter in the electoral ward of Stampin Parliamentary Constituency and Kota Sentosa State Constituency, Sarawak cum the successful candidate for the electoral ward of N11 Batu Lintang in the Sarawak State Election held in April 2011. The second applicant was businessman, a resident in Long Atip and a registered voter of the same. Pursuant to the passing of the Dewan Undangan Negeri (Composition of Membership) Bill 2014, the enactment of the Dewan Undangan Negeri (Composition of Membership) Ordinance 2014 and the *gazette* notification of the amendment of cl (2) of art 14 of the Constitution of the State of Sarawak, the respondent undertook a review of the division of the Federal and State constituencies for the purpose of election in the State of Sarawak. The respondent had published the 'Notice under s 4 of Part II of the Thirteenth Schedule to the Federal Constitution' on the 'Proposed Recommendation for Federal and State Constituencies in the State of Sarawak as Reviewed by the Election Commission in 2014' ('the notice') in the English language *New Sarawak Tribune* newspaper and Bahasa Malaysia language *Utusan Sarawak* newspaper. The respondent also placed the said notice in the *Borneo Post*, Sabah edition and the *New Strait Times*. The applicants were unhappy with the manner of the publication of the notice. It was alleged that there was insufficient information in the notice on the effect of the proposed recommendation. The applicants filed the present application for leave for judicial review for, inter alia, a declaration that the publication and or notification of the Election Commission purportedly under art 113(2) of the Federal Constitution to review the division of the Sarawak into constituencies for the purpose of elections to the Sarawak State Legislative Assembly was not in compliance with the provisions contained in the Thirteenth Schedule and was null, void and of no effect; and/or a declaration that the proposed

recommendation of the Election Commission of Malaysia to review the division of Sarawak into Federal Constituencies for the State of Sarawak for the purpose of elections to the House of Representatives was unconstitutional and is null, void and of no effect.

Held:

(1) The purpose of the publication of the s 4 notice in at least one newspaper in circulation within the constituencies which have undergone review exercise is to bring it to the knowledge of the public which include the people described in s 5(a) and (b) of the Thirteenth Schedule the Notice of the effect of the proposed recommendation. Section 4 stipulates that the notice shall be published in at least one newspaper in circulation in the constituency. The word 'shall' which carries a measure of mandatoriness, clearly says that the notice must be published in at least one newspaper circulating in the constituency. The requirement of s 4(a) is met if the notice is published in a newspaper in circulation within the constituency, regardless of the degree of circulation — whether it has wide or limited circulation (see paras 29–30).

(2) Section 4 provides only one mode of publication. It does not provide any other means of publication. As such, where there is newspaper in circulation in the constituency, the s 4 notice must be published in a newspaper circulating in the constituency. Other modes of publication, such as publication in the Election Commission website, posting on the sub-district offices and publication in other constituencies are clearly not the mode of service prescribed in the s 4 of the Thirteenth Schedule, and such publication cannot be considered as in compliance with the requirement stated in s 4 (see para 31).

(3) Publication of the s 4 notice on the respondent's website may not be useful where it concerned voters in rural areas as it is common knowledge that these folks are mostly computer illiterate and there is limited, if any, internet access in rural areas. The registered voters in the Parliamentary Constituency of Baram and the State Constituencies of Telang Usang and Marudi are directly affected by the proposed recommendation (see paras 32–33).

(4) The intitulement of the notice was not wrong. Under cl (2) of art 113, the respondent is empowered to review both constituencies for the Parliamentary election as well as for the State election at the same time. Hence, the review of the division of the State of Sarawak into Federal Constituencies for the State of Sarawak for the purpose of election to the House of Representatives was not unconstitutional, null or void or ultra vires the Federal Constitution (see para 67).

(5) The notice, the detailed particulars of the proposed recommendation disclosed in the First Schedule and the Second Schedule annexed to the Notice and the draft Constituency Plan did not show the effect of the proposed recommendation. Thus, it was not in compliance with s 4 of the Thirteenth Schedule of the Federal Constitution. When the serious substantial lacking of detailed particulars to show the effect of the proposed recommendation, together with the discrepancies averred by the first applicant, it showed that the respondent was keeping such information from public knowledge deliberately and had acted mala fide (see paras 114 & 118–119).

[Bahasa Malaysia summary

Pemohon pertama ialah pengundi berdaftar dalam wad pilihanraya kawasan Parlimen Stampin dan Dewan Undangan Negeri Kota Sentosa, Sarawak merangkap calon yang berjaya untuk wad pilihan raya N11 Batu Lintang pada Pilihan Raya Negeri Sarawak yang diadakan pada bulan April 2011. Pemohon kedua ialah ahli perniagaan, seorang bermastautin dalam Long Atip dan seorang pengundi berdaftar yang sama. Setelah Rang Undang-Undang Dewan Undangan Negeri (Komposisi Keahlian) 2014, enakmen Ordinan Dewan Undangan Negeri (Komposisi Keahlian) 2014 dan pemberitahuan warta berhubung pindaan fasal (2) perkara 14 Perlembagaan Negeri Sarawak, responden melaksanakan semakan daerah kawasan pilihanraya Persekutuan dan Negeri bagi tujuan pilihanraya di Negeri Sarawak. Responden telah menyiarkan 'Notice under Section 4 of Part II of the Thirteenth Schedule to the Federal Constitution' berhubung 'Proposed Recommendation for Federal and State Constituencies in the State of Sarawak as Reviewed by the Election Commission in 2014' ('notis tersebut') dalam bahasa Inggeris akhbar *New Sarawak Tribune* dan Bahasa Malaysia akhbar *Utusan Sarawak*. Responden juga telah meletakkan notis tersebut dalam *Borneo Post*, edisi Sabah dan New Straits Times. Pemohon-pemohon tidak gembira dengan cara penyiaran notis itu. Ia dikatakan bahawa terdapat maklumat yang tidak mencukupi dalam notis itu tentang kesan syor yang dicadangkan. Pemohon-pemohon telah memfailkan permohonan ini untuk kebenaran semakan kehakiman bagi, antara lain, satu deklarasi bahawa penyiaran dan/atau pemberitahuan tentang Suruhanjaya Pilihan Raya dikatakan di bawah perkara 113(2) Perlembagaan Persekutuan untuk menyemak semula daerah Sarawak kepada dewan undangan bagi tujuan pilihanraya kepada Dewan Undangan Negeri Sarawak tidak mematuhi peruntukan-peruntukan yang terkandung dalam Jadual Ketiga Belas dan adalah terbatal, tidak sah dan tidak mempunyai kesan; dan/atau deklarasi bahawa syor yang dicadangkan Suruhanjaya Pilihan Raya Malaysia untuk mengkaji semula daerah Sarawak kepada Pilihan Raya Persekutuan bagi Negeri Sarawak bagi maksud pilihan raya kepada Dewan Rakyat telah tidak mengikut perlembagaan dan adalah terbatal, tidak sah dan tidak mempunyai kesan.

Diputuskan:

(1) Bagi maksud penyiaran notis s 4 dalam sekurang-kurang satu akhbar dalam edaran dalam bahagian pilihan raya yang telah menjalani proses kajian adalah untuk membawa kepada pengetahuan orang ramai termasuk orang-orang yang dinyatakan dalam s 5 (a) dan (b) Jadual Ketiga Belas notis tentang kesan syor yang dicadangkan. Seksyen 4 menyatakan bahawa notis tersebut hendaklah menyiarkan dalam sekurang-kurangnya satu akhbar dalam edaran dalam kawasan itu. Perkataan 'shall' yang membawa ukuran mandatori, jelas menyatakan bahawa notis tersebut mesti disiarkan dalam sekurang-kurangnya satu akhbar dalam kawasan itu. Keperluan s 4(a) dipenuhi jika notis tersebut disiarkan dalam satu akhbar dalam edaran dalam kawasan, tanpa mengira tahap pengedaran — sama ada ia mempunyai edaran yang lebih luas atau terhad (lihat perenggan 29–30).

(2) Seksyen 4 memperutukkan hanya satu cara penyiaran. Ia tidak memperuntukkan apa-apa cara penyiaran lain. Oleh itu, di mana terdapat akhbar dalam edaran dalam kawasan, notis s 4 mesti disiarkan dalam akhbar yang diedarkan dalam kawasan itu. Cara penyiaran lain, seperti penyiaran dalam laman web Suruhanjaya Pilihan Raya, menyiarakan pada pejabat-pejabat daerah kecil dan penyiaran di kawasan pilihan raya lain jelas bukan cara perkhidmatan yang ditetapkan dalam s 4 Jadual Ketiga Belas, dan penyiaran tersebut tidak boleh dianggap sebagai mematuhi keperluan yang dinyatakan dalam s 4 (lihat perengan 31).

(3) Penyiaran notis s 4 berhubung laman web responden mungkin tidak berguna di mana ia berkaitan pengundi-pengundi kawasan pedalaman kerana ia pengetahuan am bahawa mereka kebanyakannya buta computer dan terdapat akses internet, jika ada, yang terbatas di kawasan pedalaman ini. Pengundi-pengundi berdaftar di Kawasan Parlimen Baram dan DUN Telang Usan dan Marudi secara langsung terjejas dengan syor yang dicadangkan itu (lihat perenggan 32–33).

(4) Tajuk notis tersebut tidak salah. Di bawah fasal (2) perkara 113, responden diberi kuasa untuk menyemak kedua-dua kawasan pilihan raya bagi pilihan raya Parlimen dan juga untuk pilihan raya negeri ini pada masa yang sama. Justeru, semakan daerah Negeri Sarawak ke dalam Kawasan Pilihan Raya Persekutuan bagi Negeri Sarawak bagi maksud pilihan raya ke Dewan Rakyat tidak melanggar perlembagaan, terbatal atau tidak sah atau ultra vires Perlembagaan Persekutuan (lihat perenggan 67).

(5) Notis tersebut, butiran terperinci berhubung syor yang dicadangkan telah didedahkan dalam Jadual Pertama dan Jadual Kedua yang dilampirkan kepada notis tersebut dan draf Pelan Kawasan Pilihan Raya

tidak menunjukkan kesan tentang syor yang dicadangkan. Oleh itu, ia tidak mematuhi s 4 Jadual Ketiga Belas Perlembagaan Persekutuan. Apabila terdapat butiran terperinci yang agak kurang sangat untuk menunjukkan kesan syor yang dicadangkan. Oleh itu, ia tidak mematuhi s 4 Jadual Ketiga Belas Perlembagaan Persekutuan. Apabila tidak terdapat butiran terperinci yang agak kurang sangat untuk menunjukkan kesan syor yang dicadangkan, bersama percanggahan-percanggahan yang ditegaskan oleh pemohon pertama, ia menunjukkan bahawa responden menyimpan maklumat daripada pengetahuan awam dengan sengaja dan bertindak dengan niat jahat (lihat perenggan 114 & 118–119).]

Notes

For cases on application for judicial review, see 2(3) *Mallal's Digest* (5th Ed, 2015) paras 5575–5579.

Cases referred to

Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus [1981] 1 MLJ 29, FC (refd)

Dato' Seri Ir Hj Mohammad Nizar bin Jamaluddin v Dato' Seri Dr Zambry bin Abdul Kadir (Attorney General, intervener) [2010] 2 MLJ 285, FC (refd)

Sabdin Ghani v Mohamed Saidi Lampoh & 25 Other Election Petitions [1983] 2 MLJ 61 (folld)

Sarawak Biscuit & Food Manufacture Sdn Bhd & Anor v Khidmat Edar (M) Sdn Bhd [2000] MLJU 34, HC (refd)

Legislation referred to

Dewan Undangan Negeri (Composition of Membership) Ordinance 2014

Election Petition Rules 1954 r 15(1)

Federal Constitution arts 113, 114, 116, 117, First Schedule, Second Schedule, Thirteenth Schedule, Part I, ss 2, Part II, ss 4(a), 4(b), 5, 7

Laws of the Constitution of Sarawak art 14

See Chee How (Desmond Kho and Jamilah Baharuddin with him) (Baru Bian & Co Advocates) for the applicants.

Shamsul Bolhassan (Azizan bin Mohamad Arshad and Nik Azrin Zairin binti Nik Abdullah with him) (Jabatan Peguam Negara Malaysia) for the respondent.

JC Fong (Saferi Ali with him) (State Attorney General Chambers Sarawak) for the State Government of Sarawak.

Yew Jen Kie J:

GROUNDS OF DECISION

[1] Pursuant to the passing of the Dewan Undangan Negeri (Composition of Membership) Bill 2014, the enactment of the Dewan Undangan Negeri

(Composition of Membership) Ordinance 2014 and the *gazette* notification of the amendment of cl (2) of art 14 of the Constitution of the State of Sarawak, the respondent undertook a review of the division of the federal and state constituencies for the purpose of election in the State of Sarawak.

[2] On 5 January 2015, the respondent published the 'Notice under s 4 of Part II of the Thirteenth Schedule to the Federal Constitution' on the 'Proposed Recommendation for Federal and State Constituencies in the State of Sarawak as Reviewed by the Election Commission in 2014' ('the Notice') in the English language *New Sarawak Tribune* newspaper and Bahasa Malaysia language *Utusan Sarawak* newspaper.

[3] The respondent also placed the notice in the *Borneo Post*, Sabah edition and the *New Strait Times*.

[4] Unhappy with the manner of the publication of the notice and the insufficient information in the notice on the effect of the proposed recommendation, the applicants filed the present application for leave for judicial review, seeking the following reliefs:

(a) a declaration that the publication and or notification of the Election Commission purportedly under cl (2) of art 113 of the Federal Constitution to review the division of the State of Sarawak into constituencies for the purpose of elections to the Sarawak State Legislative Assembly was not in compliance with the provisions contained in the Thirteenth Schedule and is null, void and of no effect; and/or alternatively

(b) a declaration that the proposed recommendation of the Election Commission of Malaysia to review the division of the State of Sarawak into Federal Constituencies for the State of Sarawak for the purpose of elections to the House of Representatives was unconstitutional and is null, void and of no effect;

(c) a declaration that there is serious and considerable lacking in detailed particulars of the proposed recommendations purportedly disclosed and specified in the First Schedule, Second Schedule (both are annexed to the notice published pursuant to cl 4 of the Thirteenth Schedule) and the draft Constituency Plan which were opened for inspection from 5 January 2015 up to and including 4 February 2015 at the places specified in the Third Schedule annexed to the notice published pursuant to cl 4 of the Thirteenth Schedule;

(d) a mandatory order directing that the Election Commission republishes a notice of its proposed recommendations to review the division of the State of Sarawak into constituencies for the purpose of elections to the

Sarawak State Legislative Assembly in full compliance with the provisions contained in the Thirteenth Schedule; and/or

(e) any further or other orders this honorable court may deem fit and just.

GROUNDS OF APPLICATION

[5] The grounds in support of the application are:

(a) the respondent Election Commission has abridged, restricted and/or impaired the applicants' rights to have notice of the effect of the respondent's proposed recommendations and has acted in error and or breached, inter alia, the provisions of the Thirteenth Schedule of the Federal Constitution as the respondent Election Commission of Malaysia has not published in at least one newspaper circulating in the constituency a notice stating:

(i) the effect of the proposed recommendations of the respondent Election Commission of Malaysia, that a copy of the proposed recommendation is open for inspection at a specified place within the constituency (constituencies); and

(ii) that representations with respect to the proposed recommendations may be made to the respondent Election Commission of Malaysia within one month after the publication of such notice.

(b) (for detailed averments and clarity — refer to, inter alia, paragraphs and sub-paragraphs thereunder paras 8–9 and 11–18 of the affidavits in support (1) affirmed by the abovenamed first applicant on 27 January 2015, and paras 3–11 and 13 of the affidavits in support (2) affirmed by the abovenamed second applicant on 27 January 2015);

(c) the legal authority and/or power of the respondent Election Commission of Malaysia to make recommendation under cl (2) of art 113, in this instant impugned proposal for delimitation, was derived and/or pursuant to the passing of the Dewan Undangan Negeri (Composition of Membership) Bill 2014, the enactment of the Dewan Undangan Negeri (Composition of Membership) Ordinance 2014 and the *gazette* notification of the amendment of cl (2) of art 14 of the Constitution of the State of Sarawak (none of which was specified in the notice published by the respondent Election Commission of Malaysia), that there has yet and has been no amendment to art 46 of the Federal Constitution to change the composition of the Dewan Rakyat, the respondent Election Commission of Malaysia has acted in excess of their legal authority and or power to review the division of the State of Sarawak into Federal Constituencies and consequently proposed in their report such recommendations, inter alia, no alteration in the Federal Constituencies for the State of Sarawak;

(d) (for detailed averments and clarity — refer to, inter alia, paragraphs and sub-paragraphs thereunder paras 4–7, 9, 10 and 20 of the affidavits in support (1) affirmed by the abovenamed first applicant on 27 January 2015);

(e) the respondent Election Commission of Malaysia has also acted ultra vires the Federal Constitution in assuming the legal authority and/or power to make amendment to one Federal Constituency in the State of Sarawak, the shifting of State constituencies from one parliamentary constituency to another and the redrawing of boundaries of constituencies not involved in the creation of the new State constituencies;

(f) (for detailed averments and clarity — refer to, inter alia, paragraphs and sub-paragraphs thereunder paras 2, 20.7, 20.8 and 20.9 of the affidavits in support (1) affirmed by the abovenamed first applicant on 27 January 2015);

(g) there is serious and considerable lacking in detailed particulars of the proposed recommendations purportedly disclosed and specified in the First Schedule, Second Schedule (both are annexed to the notice published pursuant to cl 4 of the Thirteenth Schedule) and the draft Constituency Plan which are opened for inspection from 5 January 2015 up to and including 4 February 2015 at the places specified in the Thirteenth Schedule annexed to the notice published pursuant to cl 4 of the Thirteenth Schedule;

(h) there are great discrepancies in the Second Schedule that was *gazetted* and 'published' in the *New Sarawak Tribune* and '*Utusan Sarawak*' newspapers, the 'Notice under s 4 of Part II of the Thirteenth Schedule to the Federal Constitution' the 'Proposed Recommendation for Federal and State Constituencies in the State of Sarawak as reviewed by the Election Commission in 2014' dated and/or *gazetted* on 23 December 2014, signed by Datuk Haji Abdul Ghani bin Salleh and dated 23 December 2014 and the one that is shown at the office counter of the Pejabat Pilihan Raya Negeri Sarawak entitled 'Syor-syor yang dicadangkan bagi Bahagian-Bahagian Pilihan Raya Persekutuan dan Negeri di dalam Negeri Sarawak sebagai mana yang telah Dikaji Semula oleh Suruhanjaya Pilihan Raya dalam Tahun 2014';

(i) the notice and specified schedules mentioned in paras 4–5 hereinabove do not show the effect of the respondent Election Commission's proposed recommendations and or provide detailed particulars of the proposed recommendations;

(j) further, the said notice and specified schedules mentioned in paras 4–5 hereinabove, in providing the effect of the respondent's Election Commission's proposed recommendation and or provided detailed

particulars of the proposed recommendation, are short of those published effect and or detailed particulars of the proposed recommendations provided in the previous constituencies and state constituencies delimitation and or constituencies review exercise which was commenced on 17 January 2005 and carried out by the same respondent Election Commission;

(k) there are much discrepancies and doubts in the detailed particulars revealed by the respondent Election Commission;

(l) the respondent Election Commission has neglected, ignored and or willfully disregarded the importance and significance of the detailed particulars of the proposed recommendations, in consequence thereof, the principles as specified in cl 2 of the Thirteenth Schedule of the Federal Constitution and required to be taken into account in dividing any unit of review into constituencies to be reflected in the detailed particulars of the proposed recommendations, are breached, violated and disregarded without explanation and clarification;

(m) (for detailed averments and clarity — refer to, inter alia, paragraphs and sub-paragraphs thereunder paras 2 and 21 through to 37 of the affidavit in support (1) affirmed by the abovenamed first applicant on 27 January 2015, and para 12 of the affidavit in support (2) affirmed by the abovenamed second applicant on 27 January 2015); and

(n) those further and other grounds appearing in the statement filed herewith and in the affidavit in support (1) of See Chee How and the affidavit in support (2) of Pauls Baya, both affirmed on the 27 day of January 2015 and filed herein shall be read in support of this application.

THE PARTIES

[6] The parties involved in this judicial review are:

(a) the first applicant is a registered voter in the electoral ward of Stampin Parliamentary Constituency and Kota Sentosa State Constituency, in the State of Sarawak cum the successful candidate for the electoral ward of N11 Batu Lintang in the Sarawak State Election held in April 2011;

(b) the second applicant, businessman, is a resident in Long Atip and a registered voter in Long Atip, Sungai Apoh, Baram in the State of Sarawak; and

(c) the respondent is the Chairman, Election Commission of Malaysia.

A LEAVE FOR JUDICIAL REVIEW

[7] On 18 February, 2015, the court granted leave for judicial review.

GROUND NO 1

B

[8] For ease of reference, the Thirteenth Schedule of the Federal Constitution is reproduced below:

Thirteenth Schedule

C (Articles 113, 116, 117)

Provisions relating to Delimitation of Constituencies

PART I

DECLARATION OF AND PRINCIPLES RELATING TO THE
D DELIMITATION OF CONSTITUENCIES

1 The constituencies for the election of members to the House of Representatives and the Legislative Assemblies of the States shall, until altered in accordance with the provisions of this Schedule, be those first used for elections to the House or Assembly, as the case may be, pursuant
E to this Constitution or the Malaysia Act.

2 The following principles shall as far as possible be taken into account in dividing any unit of review into constituencies pursuant to the provisions of Articles 116 *and* 117—

F (a) while having regard to the desirability of giving all electors reasonably convenient opportunities of going to the polls, constituencies ought to be delimited so that they do not cross State boundaries and regard ought to be had to the inconveniences of State constituencies crossing the boundaries of Federal constituencies;

G (b) regard ought to be had to the administrative facilities available within the constituencies for the establishment of the necessary registration and polling machines;

(c) the number of electors within each constituency in a State ought to be approximately equal except that, having regard to the greater difficulty
H of reaching electors in the country districts and the other disadvantages facing rural constituencies, a measure of weightage for area ought to be given to such constituencies;

(d) regard ought to be had to the inconveniences attendant on alterations
I of constituencies, and to the maintenance of local ties.

3 For the purposes of this Part, the number of electors shall be taken to be as shown on the current electoral rolls.

3A For the purposes of this Part, in any review of constituencies for the purposes of election to the House of Representatives, the Federal Territory of Kuala Lumpur, the Federal Territory of Labuan and the Federal Territory of Putrajaya shall each be regarded as a State.

PART II

PROCEDURE FOR DELIMITATION OF CONSTITUENCIES

4 Where the Election Commission have provisionally determined to make recommendations under Clause (2) of Article 113 affecting any constituency, they shall inform the Speaker of the House of Representatives and the Prime Minister accordingly, and shall publish in the Gazette and in at least one newspaper circulating in the constituency a notice stating —

(a) the effect of their proposed recommendations, and (except in a case where they propose to recommend that no alteration be made in respect of the constituency) that a copy of their recommendations is open to inspection at a specified place within the constituency; and

(b) that representations with respect to the proposed recommendations may be made to the Commission within one month after the publication of such notice,

and the Commission shall take into consideration any representations duly made in accordance with any such notice.

5 Where, on the publication of the notice under section 4 of a proposed recommendation of the Election Commission for the alteration of any constituencies, the Commission receive any representation objecting to the proposed recommendations from —

(a) the State Government or any local authority whose area is wholly or partly comprised in the constituencies affected by the recommendation; or

(b) a body of one hundred or more persons whose names are shown on the current electoral rolls of the constituencies in question,

the Commission shall cause a local enquiry to be held in respect of those constituencies.

6 In relation to any enquiry held under section 5 the Election Commission shall have all the powers conferred on Commissioners by the Commissions of Enquiry Act 1950 [Act 119].

7 Where the Election Commission revise any proposed recommendations after publishing a notice thereof under section 4, the Commission shall comply again with that section in relation to the revised recommendations, as if no earlier notice had been published:

Provided that it shall not be necessary to hold more than two local enquiries in respect of any such recommendations.

8 The Election Commission shall, having completed the procedure prescribed by this Part, submit to the Prime Minister a report on constituencies showing —

A

(a) the constituencies into which they recommend that each unit of review should be divided in order to give effect to the principles set out in section 2; and

(b) the names by which they recommend that those constituencies shall be known,

B

or stating that in their opinion no alteration is required to be made in order to give effect to the said principles.

9 As soon as may be after the Election Commission have submitted their report to the Prime Minister under section 8, he shall lay the report before the House of Representatives, together (except in a case where the report states that no alteration C is required to be made) with the draft of an Order to be made under section 12 for giving effect, with or without modifications, to the recommendations contained in the report.

10 If any draft Order referred to in section 9 is approved by the House of D Representatives by resolution supported by the votes of not less than one-half of the total number of members of that House, the Prime Minister shall submit the draft Order to the Yang di-Pertuan Agong.

11 If a motion for the approval of any draft Order referred to in section 9 is rejected by the House of Representatives, or is withdrawn by leave of the House, or is not E supported by the votes of not less than one-half of the total number of members of the House, the Prime Minister may, after such consultation with the Election Commission as he may consider necessary, amend the draft and lay the amended draft before the House of Representatives; and if the draft as so amended is approved by the House by a resolution supported by the votes of not less than one-half of the F total number of members of the House, the Prime Minister shall submit the amended draft to the Yang di-Pertuan Agong.

12 Where the draft of an Order is submitted to the Yang di-Pertuan Agong under this Part, the Yang di-Pertuan Agong shall make an Order in the terms of the draft submitted to him, and the Order shall come into force on such date as may be G specified therein:

Provided that the coming into force of any such Order shall not affect any election to the House of Representatives or a Legislative Assembly until the next dissolution of Parliament or the Assembly, as the case may be, occurring on or after that date.

H

[9] It is the applicants' contention that the respondent has abridged, restricted and/or impaired the applicants' right to have notice of the effect of the respondent's proposed recommendation and the respondent has acted erroneously and/or in breach of the provision of the Thirteenth Schedule by I not publishing in at least one newspaper circulating in the constituencies the notice of the respondent's proposed recommendation on the following grounds:

(a) *New Sarawak Tribune* and *Utusan Sarawak* have limited circulation in rural areas of Sarawak;

(b) *New Sarawak Tribune* and *Utusan Sarawak* have no circulation in the rural areas of Baram; A

(c) *New Sarawak Tribune* and *Utusan Sarawak* have no circulation in other rural areas such as Murum, Ba Kelalan, Belawai, Selirik, Sebangan and etc; B

(d) the notice, as published in the Election Commission's website, was negligently published in the Sabah edition of the *Borneo Post*, which has no circulation in Sarawak; and

(e) the majority of registered voters in Sarawak do not have notice of the notice of proposed recommendation as these voters reside in the rural areas of Sarawak. C

[10] It is the applicants' contention that the notice was only published in the *New Sarawak Tribune* and the *Utusan Sarawak* which have limited circulation in Sarawak, on sale and circulating mainly in the cities, urban and major rural areas only. D

[11] The first applicant averred in his affidavit in support (1) (encl 3) that during the one week after publication of the notice, he had made numerous telephone calls to his acquaintances and contacts in rural Sarawak. He verily believed that many community villages, longhouses and kampongs in many State constituencies such as the proposed Murum, Ba Kelalan, Belawai (proposed Kuala Rajang), the proposed Selirik, Sebangan, etc do not have any copy of the *New Sarawak Tribune* and *Utusan Sarawak* newspapers circulating in their area. E F

[12] The second applicant averred in his affidavit in support (2) (encl 5) that upon his inquiry with the bookshops in Marudi, he was told that *Borneo Post* and *Utusan Borneo* newspapers are not widely sold and distributed in Marudi. Five copies of *New Sarawak Tribune* newspaper will usually arrive a day after their publication and they are distributed directly to the government offices through one of the bookshops in Marudi. There are usually 20–40 copies of *Utusan Sarawak* newspaper on sale at the bookshop in Marudi. G H

[13] The second applicant also averred in encl 5 that there is no shop in Long San and Lio Matu selling newspapers.

[14] The second applicant averred that after checking with all the shops selling newspapers in Long Lama, there was no one selling or distributing the *New Sarawak Tribune* and *Utusan Sarawak* newspaper in Long Lama. *Borneo Post* and *Utusan Borneo* newspapers are the only English and Bahasa Malaysia newspaper distributed in Long Lama. I

[15] The applicants contended that in consequence of publishing the notice in the *New Sarawak Tribune* and *Utusan Sarawak* newspaper which have no circulation and/or of limited circulation in the rural areas in Baram and in not publishing the notice in *Borneo Post* and *Utusan Borneo* newspaper which have wide circulation in Baram area, the majority of the voters and population in the rural communities in Sarawak have no knowledge of the proposed recommendation in the notice.

[16] On the other hand, Chua Kui Soon, Sales Supervisor of New Sarawak Tribune who is responsible for the distribution and marketing of the *New Sarawak Tribune* newspaper throughout Sarawak, affirmed an affidavit on 23 March 2015 (encl 24) in which he denied that *New Sarawak Tribune* and *Utusan Sarawak* newspaper have limited circulation in Sarawak and averred that the said two newspapers have wide circulation in major towns and rural areas in Sarawak, a copy of the average daily circulation for the *New Sarawak Tribune* and *Utusan Sarawak* newspaper are annexed thereto and marked as JC1 and JC2 respectively.

[17] The applicants challenged exh JC2 in respect of *Utusan Sarawak* in that Chua Kui Soon did not disclose his information, authority and hence the basis in deposing the facts concerning the *Utusan Sarawak* throughout Sarawak and such purported facts or information are categorically denied.

[18] In disputing that *New Sarawak Tribune* and *Utusan Sarawak* have wide circulation in the major towns and rural areas in Sarawak, the applicants submitted that the figures of circulation claimed in exhs JC1 and JC2 are unsubstantiated and they are not audited and verified by the Audit Bureau of Circulations Malaysia ('ABC').

[19] The applicants submitted that ABC is an independent non-profit bureau with a membership that consists of publishers, advertisers, advertising agencies and media specialists. Its audit reports and publishers' statements reflect the accuracy of circulation claimed and as such the newspaper and magazine advertisers and media buyers are assured that the circulation data that they use are credible, reliable and accountable.

[20] A copy of the latest circulation data available for the newspapers in Sarawak (geographical distribution) downloaded on the website of ABC is annexed to the first applicant's affidavit in reply (2) (encl 26) and marked SCH8 (should be SCH7).

[21] The first applicant averred that from the records of ABC, the *New Sarawak Tribune* was formerly audited by the same ABC but in the recent years, it is no longer audited by the same ABC.

[22] The learned senior federal counsel submitted, which I concur, that it is not a legal requirement that all newspapers are to be audited by ABC and that the audit by ABC is just one of the probable methods whereby circulation data is done.

[23] As regard the applicants challenging Chua Kui Soon's basis for deposing the facts concerning *Utusan Sarawak* as Chua Kui Soon, who was the Sales Supervisor of New Sarawak Tribune, because he did not disclose in his affidavit (encl 24) his information and authority as to his deposition concerning the *Utusan Sarawak* throughout Sarawak, suffice to say that it is an undisputed fact that *Utusan Sarawak* is the sister paper of *New Sarawak Tribune* in Bahasa Malaysia and this was admitted by the first applicant in para 11 of the affidavit in support (1) affirmed on 27 January 2015 (encl 3). In view that *Utusan Sarawak* is the sister paper of *New Sarawak Tribune*, it is fair to say that Chua Kui Soon would, in all probabilities, have access to the records and files concerning the operation of *Utusan Sarawak* throughout Sarawak.

[24] Even though exhs JC1 and JC2 are not audited and verified by ABC, I see no reason not to accept it as it is quite consistent with the averment of the applicants that there is no *New Sarawak Tribune* and *Utusan Sarawak* newspaper in circulation in Long Lama, Long San and Lio Matu, Selirik, Sebangan, Murum, Ba' Kelalan and Belawai.

[25] Exhibits JC1 and JC2 are consistent with the second applicant's averment that *New Sarawak Tribune* and *Utusan Sarawak* have circulation in Marudi, the difference between them is in the degree of circulation. According to the second applicant, only 40–50 copies of *Utusan Sarawak* newspaper and 10 copies of *New Sarawak Tribune* newspaper (sent directly to the government offices) are in circulation. According to exh JC1, 50 copies of *New Sarawak Tribune* and 200 copies of *Utusan Sarawak* newspapers are in circulation in Marudi.

[26] Learned senior federal counsel submitted that the Election Commission had complied with s 4 Part II of the Thirteenth Schedule by advertising the notice in *New Sarawak Tribune* and *Utusan Sarawak* newspaper, which have circulation in the constituencies concerned. Further such notice was also available in the Election Commission website. In fact, the Election Commission had done beyond what was required by also advertising in *Borneo Post* newspaper in Sabah for voters in Sabah and in the New Straits Times newspaper in West Malaysia, which is also available in Sarawak, for the voters in West Malaysia.

[27] Section 4 of the Thirteenth Schedule expressly stipulates, inter alia, that the Election Commission 'shall' publish in the *gazette* and in at least one

newspaper circulating in the constituency the notice. In my view, the constituency spoken of here must be the constituency affected by the delimitation review exercise.

[28] I find support for this view in the case of *Sabdin Ghani v Mohamed Saidi Lampoh & 25 Other Election Petitions* [1983] 2 MLJ 61, where Justice Seah (as His Lordship then was), in explaining the provisions under r 15(1) of the Election Petition Rules 1954 (in pari materia with s 4 of the Thirteenth Schedule), held:

> ... Now, when the amendment to Rule 15 was made to allow service of the petition by advertisement in a newspaper circulating in the constituency or electoral ward in which the election was held, the primary consideration, I think, is to see how best the election petition can be brought to the personal attention of the respondent. The main purpose of the publication in the newspaper, is, I think, to bring the election petition to the notice of the person to be served and it is hope that by means of the advertisement, this will come to the knowledge ...

[29] Although *Sabdin Ghani*'s case is about service of election petition, the same principle is applicable to the publication of the s 4 notice. In the light of *Sabdin Ghani*'s case, it is fair to say that the purpose of the publication of the s 4 notice in at least one newspaper in circulation within the constituencies which have undergone review exercise is to bring it to the knowledge of the public which include the people described in s 5(a) and (b) of the Thirteenth Schedule the notice of the effect of the proposed recommendation. The people described in s 5(a) and (b) are: (a) the State Government or any local authority who area is wholly or partly comprised in the constituencies affected by the recommendation and (b) a body of hundred or more persons whose names are shown in the electoral roll of the constituency in question; ('registered voters' such as the applicants and those whom they represent).

[30] Section 4 stipulates that the notice shall be published in at least one newspaper in circulation in the constituency. The word 'shall' which carries a measure of mandatoriness, clearly says that the notice must be published in at least one newspaper circulating in the constituency. In my view, the requirement of s 4(a) is met if the notice is published in a newspaper in circulation within the constituency, regardless of the degree of circulation — whether it has wide or limited circulation.

[31] Section 4 provides only one mode of publication. It does not provide any other means of publication. As such, where there is newspaper in circulation in the constituency, the s 4 notice must be published in a newspaper circulating in the constituency. Other modes of publication, such as publication in the Election Commission website, posting on the sub-district offices and publication in other constituencies, like in the Sabah Edition of the

Borneo Post and *New Strait Times* newspapers (as the respondent did), are clearly not the mode of service prescribed in the s 4 of the Thirteenth Schedule, and such publication cannot be considered as in compliance with the requirement stated in s 4.

[32] In my view, it is fair to say that publication of s 4 notice on the respondent's website may not be useful where it concerns voters in rural areas as it is common knowledge that these folks are mostly computer illiterate and there is limited, if any, internet access in rural areas.

[33] It is the fact that the registered voters in the Parliamentary Constituency of Baram and the State Constituencies of Telang Usang and Marudi are directly affected by the proposed recommendation.

[34] It has been shown above that there are *New Sarawak Tribune* and *Utusan Sarawak* newspapers circulating in Marudi. Thus, there is publication of the notice of the effect of the proposed recommendation.

[35] The second applicant averred that only *Borneo Post* and *Utusan Borneo* are in distributed in Long Lama. However, as seen from exh SCH7, it appears that *Borneo Post* and *Utusan Borneo* do not have circulation beyond Miri. It is common ground that *New Sarawak Tribune* and *Utusan Sarawak* are not in circulation in Long Lama.

[36] One might ask: Where indeed there is no newspaper in circulation in the constituencies affected by the constituencies review exercise, which renders it impossible for the respondent to comply with the requirement in s 4 of the Thirteenth Schedule, what can the respondent do? I am of the view that the respondent can take proactive measure by resorting to other means of publication that could bring the notice of the effect of the proposed recommendation to the public and registered voters in the affected constituencies.

[37] In the present case, the respondent averred that they had published the notice in every district and sub-district offices throughout the State of Sarawak. In this regard, banners have also been placed at those district and sub-district offices informing the voters of the process.

[38] In the State Constituencies where there is no newspaper in circulation, the respondent had published the notice in *New Sarawak Tribune* and *Utusan Sarawak* newspaper which are in circulation in the Federal Constituencies, for example, Federal Constituency of Baram in the District of Miri (for the State Constituencies of Telang Usang and Long Lama), Federal Constituency of Kapit in the District of Kapit for the State Constituency of Selirik, Federal

Constituency of Batang Lupar in the District of Sri Aman for the State Constituency of Sebuyau.

THE COURT'S DECISION ON GROUND NO 1

[39] For the reasons given above, the applicants have not show that the respondent had breached the provision of the Thirteenth Schedule of the Federal Constitution for failing to publish the notice in at least one newspaper circulation in the constituency.

GROUNDS NO 2 AND 3

[40] As these two grounds of judicial review involve art 113 of the Federal Constitution, I shall, for ease of reference, reproduce the relevant provision, which states:

113 Conduct of elections

(1) There shall be an Election Commission, to be constituted in accordance with Article 114, which, subject to the provisions of federal law, shall conduct elections to the House of Representatives and the Legislative Assemblies of the States and prepare and revise electoral rolls for such elections.

(2) (i) Subject to paragraph (ii), the Election Commission shall, from time to time, as they deem necessary, review the division of the Federation and the States into constituencies and recommend such changes therein as they may think necessary in order to comply with the provisions contained in the Thirteenth Schedule; and the reviews of constituencies for the purpose of elections to the Legislative Assemblies shall be undertaken at the same time as the reviews of constituencies for the purpose of elections to the House of Representatives.

(ii) There shall be an interval of not less than eight years between the date of completion of one review, and the date of commencement of the next review, under this Clause.

(iii) A review under paragraph (i) shall be completed within a period of not more than two years from the date of its commencement.

(3) If the Election Commission are of opinion that in consequence of a law made under Article 2 it is necessary to undertake the reviews mentioned in Clause (2), they shall do so, whether or not eight years have elapsed since the last review under that Clause.

(3A) (i) Where the number of elected members of the House of Representatives is altered in consequence of any amendment to Article 46, or the number of elected members of the Legislative Assembly of a State is altered in consequence of a law enacted by the Legislature of a State, the Election Commission shall, subject to Clause (3B), undertake a review of the division into federal or State constituencies, as the case may be, of the area which is affected by the alteration, and such review shall be completed within a period of not more than two years from the date of the coming into force of the law making the alteration.

(ii) A review under paragraph (i) shall not affect the interval provided under paragraph (ii) of Clause (2) in respect of a review under paragraph (i) of that Clause.

(iii) The provisions of the Thirteenth Schedule shall apply to a review under this Clause, but subject to such modifications as may be considered necessary by the Election Commission.

(3B) Where an amendment to Article 46 or a law enacted by the Legislative Assembly of a State referred to in paragraph (i) of Clause (3A) comes into force after the lapse of eight years from the date of completion of the last review under Clause (2) and the Election Commission are of the opinion that it is necessary to undertake a review under Clause (2), the Election Commission shall not undertake a review under paragraph (i) of Clause (3A) but shall instead undertake a review under Clause (2) and in conducting such review shall take into account any area which is affected in consequence of the amendment or the law referred to in paragraph (i) of Clause (3A).

(4) Federal or State law may authorize the Election Commission to conduct elections other than those referred to in Clause (1).

(5) So far as may be necessary for the purposes of its functions under this Article the Election Commission may make rules, but any such rules shall have effect subject to the provisions of federal law.

(6) There shall be separate reviews under Clause (2) for the States of Malaya and for each of the States of Sabah and Sarawak, and for the purposes of this Part the expression 'unit of review' shall mean, for federal constituencies, the area under review and, for State constituencies, the State and the expression 'States of Malaya' shall include the Federal Territories of Kuala Lumpur, Labuan and Putrajaya.

(7) Subject to Clause (3), the period for the first reviews under Clause (2) for any unit of review shall be calculated from the first delimitation of constituencies for that unit under this Constitution or under the Malaysia Act [Act No. 26 of 1963].

(8) Notwithstanding Clause (7) of this Article the period for reviews under Clause (2) for the unit of review of the States of Malaya undertaken after the passing of the Constitution (Amendment) (No. 2) Act 1973 shall be calculated from the first delimitation of constituencies for that unit immediately following the passing of that Act.

(9) The date of the commencement of a review under Clause (2) or Clause (3A), as the case may be, shall be the date of the publication in the Gazette of the notice referred to in section 4 of the Thirteenth Schedule.

[41] For ease of reference, the intitulement of the notice reads (the English version):

FEDERAL CONSTITUTION

Clause (2) of Article 113

NOTICE UNDER SECTION 4 OF PART II OF THE THIRTEENTH SCHEDULE TO THE FEDERAL CONSTITUTION

IN THE STATE OF SARAWAK AS REVIEWED BY THE ELECTION COMMISSION IN 2014

CONTENTION OF THE APPLICANTS

[42] The applicants claimed that the review of the Federal Constituencies in Sarawak by the respondent in the 'Proposed recommendation for Federal and State Constituencies in the State of Sarawak as reviewed by the Election Commission in 2014' for the purpose of State election in Sarawak is erroneous, illegal, improper, irregular and ultra vires the Federal Constitution for the reasons given below.

[43] The applicants asserted that based on the press release dated 4 January 2015 (exh SCH1), the secretary of the respondent revealed, inter alia, the respondent's proposal to increase the number of State seats in Sarawak from the current 71 to 82; that the review of the division of the Federal and the State into constituencies for the purpose of elections in the State of Sarawak is undertaken pursuant to the amendment to the Constitution of the State of Sarawak which has come into force on 5 December 2014 and the review is carried out in accordance with cl (3B) of art 113 of the Federal Constitution which came into effect on 5 December 2014.

[44] Then, in another press release made subsequently on 16 January 2015 (exh SCH3), the secretary of the respondent clarified that the review of the Sarawak State Constituencies was undertaken pursuant to the amendment made to cl 2 of art 14 of the Constitution of the State of Sarawak, concerning the DUN (State Legislative Assembly) composition of membership from 71–82 approved on 11 November 2014 and *gazetted* to take effect on 5 December 2014 (para 20/2 encl 3).

[45] In the light of the statements in exhs SCH1 and SCH3, the applicants submitted that the delineation review exercise was carried out pursuant to the enactment of the Dewan Undangan Negeri (Composition of Membership) Ordinance 2014 and the *gazette* notification of the amendment of cl (2) of art 14 of the Constitution of the State of Sarawak. Hence, it was carried out in accordance with cll (3A) and (3B) of the Federal Constitution.

[46] However, the applicants averred that the intitulement of the notice merely mention 'Clause (2) of Article 113'. Neither cl (3B) of art 113 of the Federal Constitution nor amendment made to cl 2 of art 14 of the Constitution of the State of Sarawak was mentioned in the intitulement of the notice. In other words, the notice has not stated that the proposal was made pursuant to the passing of the Dewan Undangan Negeri (Composition of Membership) Bill 2014 and the enactment of the Dewan Undangan Negeri

(Composition of Membership) Ordinance 2014 and the *gazetted* notification of the amendment of cl (2) of art 14 of the Constitution of the State of Sarawak. Hence, the intitulement of the notice is wrong.

[47] The applicants further asserted that there has been no amendment to art 46 of the Federal Constitution to change the composition of the Parliament (Dewan Rakyat) nor enactment of any law by the Legislative Assembly of any State, other than Sarawak. Thus, the respondent has acted in excess of their legal authority and/or power to review the division of the State of Sarawak into federal constituencies and consequently proposed such recommendations, as appeared in the notice, at para 2(a) and (b):

(a) no alteration in the Federal Constituencies for the State of Sarawak.

(b) for the purpose of the delimitation of constituencies, there are amendments made to the name of the Federal Constituencies involving one Federal Constituency in the State of Sarawak.

[48] The respondent has proposed to move N11 Batu Lintang State Constituency from the Federal Constituency of Stampin to the Federal Constituency of Bandar Kuching.

[49] The applicants further submitted that the respondent cannot choose to undertake a review under cl (2), as there has been no notification that the respondent has deemed it necessary and is undertaking a review for the Federation and the States at the same time. To put it in another way, the respondent should have indicated that it is of the opinion that it is necessary to undertake a review under cl (2), if they have intended to do so, after the review under cl (3A) was activated. There has been no such assertion by the respondent.

[50] It was submitted for the applicants that the phrase 'a review under cll (2) or cl (3A)' in cll (9) and (10) of art 113 of the Federal Constitution have clearly distinguished the review undertaken pursuant to cll (2) or (3A).

[51] The applicants submitted that the publication and/or notification of the respondent should be made under cl (3B) and/or cl (3A) together with cl (2) of art 113 of the Federal Constitution and not merely under cl (2) of art 113 to review the division of the State of Sarawak into constituencies for the purpose of election to the Sarawak State Legislative Assembly.

[52] The applicants submitted that the respondent was wrong in carrying out delineation review exercise under cl (2), in consequence thereof, has committed error and/or has acted in excess of their legal authority and power to review the division of the State of Sarawak into Federal Constituencies and

proposed such recommendations, inter alia, no alteration in the Federal Constituencies in the State of Sarawak.

CONTENTION OF THE RESPONDENT

[53] For the respondent, it was contended that following the 1984 amendment to the Federal Constitution by adding cl (3A), a change in constituencies can be made at any time and for any portion of the Federation or any state by merely varying the number of House of Representative seats for that portion or State or by varying the number of State Assembly seats for that State without waiting for the eight years period to lapse. The new cl (3A) empowers the Election Commission to carry out special reviews and not required to follow strictly the guiding principles specified in the Thirteenth Schedule.

[54] It was further submitted that pursuant to cl (3B) which was added following the 1992 amendment, any amendment made to art 46 of the Federal Constitution or law enacted by the State Legislative Assembly under para (1) of cl (3A) comes into force after eight years of delineation. If the Election Commission is of the opinion that it is necessary to undertake a review under cl (2), the Election Commission shall not undertake a review under para (1) of cl (3A) but shall instead undertake a review under cl (2).

[55] It was submitted that eight years had already lapsed when the amendment to the Sarawak Legislation Assembly was enacted, hence the Election Commission had not acted ultra vires the Federal Constitution in reviewing the Federal Constituency in Sarawak.

[56] The Federal Constitution has undergone numerous amendments. With the passing of the Constitution (Amendment) Act 1984 ('Act 585'), the following amendments were made:

(a) the present cl (2) was introduced to substitute the former cl (2);

(b) the new cl (3A) was enacted and inserted into art 113;

(c) cl (9) and (10) are inserted into art 113;

(d) cl (3B) of art 113 was enacted and inserted with the passing of the Constitution (Amendment) (No 2) Act 1993 ('A849'); and

(e) by the same A849, the words 'subject to cl (3B)', were inserted after the words 'the Election Commission shall' in para (i) of cl (3A).

[57] The situation since independence and prior to the Amendment Act 1984 (A585) was described by Professor Dr S Sothi Rachagan in his book *Law and the Electoral Process in Malaysia*, 1993 publication, as thus:

> Since independence, the Constitution provided that constituencies had to be normally reviewed at intervals of eight to ten years. An earlier review could, however, be undertaken under three special circumstances when there was an admission of a new state to the Federation, or when the boundaries of any state were altered, or when Parliament varied the number of seats allocated to any state. Another feature of the delineation rules was that there was no provision for the legislative assemblies of each state to activate a redelineation of their constituencies. Indeed, even if they amended their constitutions to increase the total number of seats, constituency changes could not be brought about immediately. These changes had to await the periodical review every eight to ten years or those undertaken in the special circumstances mentioned above. A third aspect of the rules was that except for Sabah and Sarawak which were separate units of review, all the other states were treated as one unit of review and when a review was undertaken the whole unit had to be reviewed. These three features of the delineation rules served to ensure a degree of permanency of constituency boundaries and yet allow for a periodic review of their efficacy.

[58] The effect of the Amendment Act (A858) is vividly described by Professor Rachagan as thus:

> The 1984 amendments affected all three aspects of the rules discussed above. The Election Commission need no longer review constituencies within any specified time span though it is still prohibited from undertaking a normal review within eight years. However, a special review can now be undertaken for any state or part of a state, including those in Peninsular Malaysia, whenever the House of Representatives or any state assembly varies the number of its seats.

[59] Professor Rachagan also made this observation on the new amendment as being partisan to the party in power by the simple act of invoking art 46 of the Federal Constitution or by enacting a State law to alter the composition of the State Assembly. He states:

> However, as a result of the amendment the party in power can now effect a change in constituencies at any time and for any portion of the Federation or any state by merely varying the number of House of Representative seats for that portion or state or by varying the number of state assembly seats for that state.

[60] Professor Rachagan also noted the arbitrariness of the 1984 Amendment as follows:

> The Election Commission is also, in the case of these special reviews, not required to follow strictly the guiding principles for delineation specified in the Thirteenth Schedule.

[61] A similar discourse on the Amendment Act 1984 (A585) was made by Dr Lim Hong Hai, a reputable Social Scientist from Universiti Sains Malaysia, who also made similar conclusions on the effect of A585. He wrote:

More importantly, a new clause (3A) was added to article 113 to provide for the review of affected areas whenever Parliament or a State Legislative Assembly changes the number of its seat. Before this amendment, a review involved an entire unit of review and not part thereof, and if Parliament or a State Assembly changed the number of its seats, that change could not be carried out immediately but had to wait for the next normal review of the unit concerned. By removing these constrains, the amendment enables the party in power 'to effect a change in constituencies at any time and for any portion of the Federation or any State by merely varying the number of House of Representative seats or by varying the number of state assembly seats for that state'. (Sothi, 1993:66). Furthermore, the same clause also absolves all such reviews from strict compliance with the principles of constituency delineation contained in the Thirteenth Schedule; for these reviews, the principles were made 'subject to such modifications as may be considered necessary by the Election Commission.

THE COURT'S DECISION ON GROUNDS NOS 2 AND 3

[62] Reading cll (2), (3A) and (3B) together, my understanding is this:

(a) there are clear distinctions between a review under cl (2) and a review under cl (3A);

(b) under cl (2), the Election Commission is empowered, as they deem necessary, to commence a review of constituencies for the House of Representatives and all the State Legislative Assemblies at the same time. A review under this clause shall be done at an interval of at least eight years;

(c) under cl (3A), the Election Commission is empowered, subject to cl (3B), to commence review of Constituencies for the House of Representatives and/or any of the State Legislative Assemblies, as the case may be, pursuant to an amendment to art 46 of the Federal Constitution or enactment of a State Legislature to change the number of members of the State Assembly. A review under cl (3A) has been described as special review by the learned author mentioned earlier;

(d) in the special review under cl (3A), the provisions of the Thirteenth Schedule shall apply, but subject to such modification as may be considered necessary by the Election Commission;

(e) under cl (3B), where the amendment to art 46 of the Federal Constitution and/or the enactment of the State Legislature to change the number of seats comes into force after the lapse of eight years from the date of completion of the last review under cl (2), and if the Election Commission is of the opinion that it is necessary to undertake a review under cl (2), the Election Commission is empowered to commence a review of constituencies for the House of Representatives and/or any of the State Legislative Assemblies under cl (2), and not under para (i) of cl

(3A), by taking into account any area which is affected in consequence of the amendment or the law referred to in para (i) of cl (3A);

(f) where the Election Commission considered it necessary to undertake a review under cl (2), the Election Commission in order to comply with the provisions contained in the Thirteenth Schedule, shall not undertake a special review under cl (3A) but shall instead carry out a review under cl (2) and in conducting such review shall take into account any area which is affected in consequence of the amendment or the law referred to in paragraph (i) of cl (3A); and

(g) in carrying out the review under cl (2), the respondent shall comply with the provision contained in the Thirteenth Schedule.

[63] It is undisputed fact that the last delineation review exercise was conducted in 2005. As such, when the amendment was made to cl 2 of art 14 of the Constitution of the State of Sarawak to increase the State Legislative Assembly composition of membership from 71 to 82 approved on 11 November 2014 and *gazetted* to take effect on 5th December 2014, a period of eight years had already lapsed since the last delineation review exercise. Under the circumstance, the respondent is entitled, if he is of the opinion that it is necessary to undertake a review under cl (2), not to undertake a review under para (i) of cl (3A) but shall instead undertake a review under cl (2) and in conducting such review shall take into account any area which is affected in consequence of the amendment or the law referred to in para (i) of cl (3A).

[64] In other words, in the light of cl (2) of art 113 of the Federal Constitution, the reviews of the constituencies for the purpose of election to the Legislative Assemblies shall be undertaken at the same time as the review of constituencies for the purpose of election to the House of Representatives. Thus, in the context of this judicial review, the delineation review exercise is not just for the State of Sarawak which is affected by the alteration to the Sarawak State Constitution as it would be if the review had been carried out under cl (3A).

[65] From the intitulement of the notice, it is implicit that the respondent had considered it necessary to undertake a delineation review exercise under cl (2) of art 113 of the Federal Constitution in order to comply with the provisions contained in the Thirteenth Schedule.

[66] Notwithstanding the contradicting statement made by the respondent as per exhs SCH1 and SCH3, it is clear from the intitulement of the notice that the review exercise was pursuant to cl (2) of art 113 of the Federal Constitution.

[67] In the premise, I am of the view that the intitulement of the notice

('SCH2') is not wrong. Under cl (2) of art 113, the respondent is empowered to review both constituencies for the Parliamentary election as well as for the State election at the same time. Hence, the review of the division of the State of Sarawak into Federal Constituencies for the State of Sarawak for the purpose of election to the House of Representatives was not unconstitutional, null or void or ultra vires the Federal Constitution.

[68] Under the circumstance, the complaints under grounds Nos 2 and 3 is holds no water and must fail.

GROUNDS NOS 4, 5, 6 AND 7

[69] The gist of these grounds of complaint is that there is serious and considerable lacking in detailed particulars of the proposed recommendation disclosed and specified in the First Schedule, Second Schedule (both annexed to the notice) and the draft constituency plan which are opened for inspection from 5 January 2015 up to and including 4 February 2015 at the places specified in the Thirteenth Schedule annexed to notice.

[70] Further, the notice and the First Schedule, Second Schedule in the notice and in the booklet entitled 'Syor Syor yang dicadangkan bagi Bahagian-Bahagian Pilihan Raya Persekutuan dan Negeri di dalam Negeri Sarawak Sebagai mana yang telah Dikaji Semula oleh Suruhanjaya Pilihan Raya Dalam Tahun 2014' shown in the office counter of respondent's office in Kuching do not show the effect of the respondent's proposed recommendation and/or provide detailed particulars of the proposed recommendation.

[71] The notice as published in the *New Sarawak Tribune* and *Utusan Sarawak* newspaper states:

> TAKE NOTICE that the Election Commission, in accordance with the requirement of Clause (2) of Article 113 of the Federal Constitution, has reviewed the division of the State of Sarawak into Federal Constituencies and State Constituencies.
>
> 2. Consequent upon the review, the Election Commission proposes to recommend in their report such recommendations:
>
> (a) No alteration to the Federal Constituencies for the State of Sarawak;
>
> (b) The number of State Constituencies for the State of Sarawak is increased by eleven constituencies making the overall total of the State Constituencies for the State of Sarawak at 82 constituencies;
>
> (c) For the purposes of the review of the delimitation of Constituencies, there are amendments made to the name of the Federal Constitution involving one Federal Constituency in the State of Sarawak; and

(d) There are also amendments made to the name of the State Constituencies involving four State Constituencies in the State of Sarawak.

3. The total number of voters in the electoral rolls which was endorsed and gazetted on 30 April 2014 was used for the purpose of the review of the delimitation of the Federal and State Constituencies in the State of Sarawak.

4. Detailed particulars of the proposed recommendations for the State of Sarawak regarding the new Federal and State Constituencies and amendments to the existing names of the Federal and State Constituencies in the State of Sarawak are specified in the First Schedule.

5. Detailed particulars of the proposed recommendations regarding the overall Federal and State Constituencies in the State of Sarawak are specified in the Second Schedule.

6. A copy of the proposed recommendations together with the draft Constituencies Plan for the State of Sarawak may be inspected from 5 January 2015 up to and including 4 February 2015 during normal office hours at the places specified in the Third Schedule.

7. According to section 4(b), Part II of the Thirteenth Schedule of the Federal Constitution, representations with respect to the proposed recommendations may be made to the Election Commission within one month after the date of the publication of the notice.

8. In accordance with section 5, Part II of the Thirteenth Schedule of the Federal Constitution, parties who can make representations objecting to the proposed recommendations are:

(a) the State Government; or

(b) any local authority whose area is wholly or partly comprised in the constituencies affected by the recommendations; or

(c) a body of one hundred or more persons whose names are shown on the current electoral rolls of the constituencies in question.

9. Any representation objecting to the proposed recommendations shall be submitted in writing to the Election Commission and addressed to the Sarawak State Election Officer as below:

...

[72] The First Schedule entitled 'NEW FEDERAL AND STATE CONSTITUENCIES AND AMENDMENTS TO THE EXISTING NAMES OF THE FEDERAL AND STATE CONSTITUENCIES IN THE STATE OF SARAWAK' published the Federal and State Constituencies and amendments to the existing names of the Federal and State Constituencies in the State of Sarawak.

[73] The Second Schedule entitled 'FEDERAL AND STATE CONSTITUENCIES IN THE STATE OF SARAWAK' published the Federal Constituency, State Constituency and number of electors.

[74] Learned senior federal counsel submitted that the notice has clearly stated 'the effect of their proposed recommendation, and (except in a case where they propose to recommend that no alteration be made in respect of the constituency) that a copy of their recommendations is open for inspection at a specified place within the constituency', which is a verbatim version of s 4(a) of Part II of the Thirteenth Schedule of the Federal Constitution.

[75] Learned senior federal counsel further submitted that the notice also stated that representation with respect to the proposed recommendations may be made to the Election Commission within one month after the publication of such notice, which is also a verbatim version of s 4(b) of Part II of the Thirteenth Schedule of the Federal Constitution.

[76] Learned senior federal counsel submitted that the effect of the notice resulted in 64 representations objecting to the proposed recommendations received by the respondent, and the grounds of objection to the proposed recommendations were clearly stated in these representations.

[77] Learned senior federal counsel submitted that it sufficed for the respondent to state in the notice the following:

> (a) No alteration to the Federal Constituencies for the State of Sarawak;
>
> (b) The number of State Constituencies for the State of Sarawak is increased by eleven constituencies making the overall total of the State Constituencies for the State of Sarawak at 82 constituencies;
>
> (c) For the purposes of the review of the delimitation of Constituencies, there are amendments made to the name of the Federal Constitution involving one Federal Constituency in the State of Sarawak; and
>
> (d) There are also amendments made to the name of the State Constituencies involving four State Constituencies in the State of Sarawak.
>
> 3. The total number of voters in the electoral rolls which was endorsed and gazetted on 30 April 2014 was used for the purpose of the review of the delimitation of the Federal and State Constituencies in the State of Sarawak.
>
> 4. Detailed particulars of the proposed recommendations for the State of Sarawak regarding the new Federal and State Constituencies and amendments to the existing names of the Federal and State Constituencies in the State of Sarawak are specified in the First Schedule.

> 5. Detailed particulars of the proposed recommendations regarding the overall Federal and State Constituencies in the State of Sarawak are specified in the Second Schedule.
>
> 6. A copy of the proposed recommendations together with the draft Constituencies Plan for the State of Sarawak may be inspected from 5 January 2015 up to and including 4 February 2015 during normal office hours at the places specified in the Third Schedule.

[78] Learned senior federal counsel submitted that there is no necessity to include in the notice the proposed electoral rolls, proposed boundary map of the new polling districts, a complete list of polling districts affected by the proposed recommendation, disclosure of electoral size and the land mass of the new constituencies.

[79] Learned senior federal counsel submitted that detailed particulars of the proposed recommendations for the State of Sarawak regarding the new Federal and State Constituencies and amendments to the existing names of the Federal and State Constituencies in the State of Sarawak; detailed particulars of the proposed recommendations regarding the overall Federal and State Constituencies in the State of Sarawak are specified in the First Schedule and Second Schedule annexed to the notice and a copy of the proposed recommendations together with the draft constituencies plan for the State of Sarawak may be inspected from 5 January 2015 up to and including 4 February 2015 during the normal office hours at the places specified in the Third Schedule.

[80] The key word in s 4(a) is 'effect' of the proposed recommendation.

[81] The *Longman Dictionary of Contemporary English* defines 'effect' as 'change/result (uncountable and countable) the way in which an event, action, or person changes someone or something'. The *Concise Oxford English Dictionary* defines 'effect' as 'which is a result or consequence of an action or other cause'.

[82] The question to be asked is: whether there is serious lacking in detailed particulars of the proposed recommendation in the First Schedule and Second Schedule annexed to the notice and the draft constituency plan to show the effect of the proposed recommendation, thus in breach of s 4 of the Thirteenth Schedule of the Federal Constitution?

[83] To answer this question, it is helpful to revisit the two fundamental principles in interpretating a constitution. In *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29, Raja

Azlan Shah AG LP (as His Lordship then was) held:

> In interpreting a constitution two points must be borne in mind. First, judicial precedent plays a lesser part than is normal in matters of ordinary statutory interpretation. Secondly, a constitution, being a living piece of legislation, its provisions must be construed broadly and not in a pedantic way — 'with less rigidity and more generosity than other Acts' (see *Minister of Home Affairs v Fisher* [1979] 3 All ER 21. A constitution is sui generis, calling for its own principles of interpretation, suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation. As stated in the judgment of Lord Wilberforce in that case: 'A constitution is a legal instrument given rise, amongst other things, to individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to that language. It is quite consistent with this, and with the recognition that rules of interpretation may apply, to take as a point of departure for the process of interpretation a recognition of the character and origin of the instrument, and to be guided by the principle of giving full recognition and effect to those fundamental rights and freedoms'. The principle of interpreting constitutions 'with less rigidity and more generosity' was again applied by the Privy Council in *Attorney-General of Saint Christopher, Nevis and Anguilla v Reynolds* [1979] 3 All ER 129 at p 136.

[84] In *Dato' Seri Ir Hj Mohammad Nizar bin Jamaluddin v Dato' Seri Dr Zambry bin Abdul Kadir (Attorney General, intervener)* [2010] 2 MLJ 285, the Federal Court, in the discussion on the principle applicable to the interpretation of a constitution, uttered:

> [24] The answers to the questions posed to us turn essentially on the construction to be accorded to the relevant provisions of the State Constitution. We have been reminded by learned counsel for the parties as to the principles to be adopted in the interpretation of the Constitution. Basically, a Constitution being the supreme law of a State or Federation, it has to be interpreted differently from ordinary statute. The Privy Council in *Hinds and others v The Queen; Director of Public Prosecutions v Jackson; Attorney General of Jamaica (intervener)* [1976] 1 All ER 353 said:
>
> > To seek to apply to constitutional instruments the canons of construction applicable to ordinary legislation in the fields of substantive criminal or civil law would ... be misleading.
>
> (See also *Liyanage and Others v Reginam* [1966] 1 All ER 650).
>
> [25] In *Minister of Home Affairs v Fisher* [1979] 3 All ER 21, the Privy Council was faced with interpreting the fundamental rights provisions of the Bermuda Constitution. It concluded by saying that these provisions 'call for a generous interpretation avoiding the austerity of tabulated legalism, suitable to give to individuals the full measure of the fundamental rights and freedom' (see also *Teh Cheng Poh v Public Prosecutor* [1979] 1 MLJ 50) and this court in *Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor* [1992] 1 MLJ 697 at p 709 stated:

Secondly, as the judicial committee of the Privy Council held in *Minister of Home Affairs v Fisher*, a constitution should be construed with less rigidity and more generosity than other statutes and as sui juris, calling for principles of interpretation of its own, suitable to its character but not forgetting that respect must be paid to the language which has been used.

In this context, it is also worth recalling what Barwick CJ said when speaking for the High Court of Australia, in Attorney General of the Commonwealth, ex relatione *McKinley v Commonwealth of Australia*:

> The only true guide and the only course which can produce stability in constitutional law is to read the language of the constitution itself, no doubt generously and not pedantically, but as a whole and to find its meaning by legal reasoning.

[26] *NS Bindra's Interpretation of Statutes,* (10th Ed) at p 1295 speaks of two theories of interpretation of Constitution namely, the mechanical and organic theories. At p 1296 it stated that the organic method is to be preferred. 'The organic method requires us to see the present social conditions and interpret the Constitution in a manner so as to resolve the present difficulties'. From the authorities cited above our courts are inclined to the organic theory in the interpretation of the Constitution.

[27] One other important guide in interpretation of Constitution is that, 'The Constitution must be considered as a whole, and so as to give effect, as far as possible, to all its provisions. It is an established canon of constitutional construction that no one provision of the Constitution is to be separated from all the others, and considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purpose of the instrument. An elementary rule of construction is, that if possible, effect should be given to every part and every word of a Constitution and that unless there is some clear reason to the contrary, no portion of the fundamental law should be treated as super fluous.

(See *Danaharta Urus Sdn Bhd v Kekatong Sdn Bhd (Bar Council Malaysia, intervener)* [2004] 2 MLJ 257).

[85] In the light of the discourse referred to in the above, it is clear that in interpreting a provision in a Constitution, not even one provision of the Federal Constitution is to be separated from all the others and considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the greater purpose of the instrument.

[86] With this in mind, one might ask: what is the intention of the drafter of the Constitution in legislating s 4(a) which stipulates that the notice shall be published in the *gazette* and in at least one newspaper circulating in the constituency, stating the effect of the respondent's proposed recommendation?

[87] Thus, in my view, s 4(a) must be read together with other provisions in

the Thirteenth Schedule and other provisions in the Constitution related to election.

[88] Article 114 of the Federal Constitution, which governs the qualifications of electors, states:

> (1) Every citizen who —
>
> (a) has attained the age of twenty-one years on the qualifying date;
>
> (b) is resident in a constituency on such qualifying date or, if not so resident, is an absent voter; and
>
> (c) is, under the provisions of any law relating to elections, registered in the electoral roll as an elector in the constituency in which he resides on the qualifying date,
>
> is entitled to vote in that constituency in any election to the House of Representatives or the Legislative Assembly unless he is disqualified under Clause (3) or under any law relating to offences committed in connection with elections; but no person shall in the same election vote in more than one constituency.

[89] The respondent is constituted in accordance with art 114 under Part VIII of the Federal Constitution which relates to election. They are empowered by art 113 to review the division of the Federation and the State into constituencies and recommend such changes as they may think necessary. Article 116 provides that for the election of members to the House of Representatives a unit of review shall be divided into constituencies in accordance with the provisions contained in the Thirteenth Schedule. Article 117 provides similar provision as art 116 in respect of the state constituency.

[90] Section 2 of Part I of the Thirteenth Schedule laid down the principles that shall, as far as possible, be taken into account in dividing any unit of review into constituencies pursuant to the provisions of arts 116 and 117.

[91] Part II of the Thirteenth Schedule laid down the procedure for delimitation of constituency. Section 4(a) requires that s 4 notice must be published in the *gazette* and in at least one newspaper circulating in the constituency, a notice stating the effect of the proposed recommendation and that a copy of their recommendation is open for inspection at a specified place in the constituency.

[92] Section 4(b) provides that representations with regard to the proposed recommendation may be made to the Election Commission within one month after the publication of such notice.

[93] Section 5 of Part II of the Thirteenth Schedule listed out the people who

can submit representation with regard to the proposed recommendation, namely, (a) state government and local authority whose area is wholly or partly comprised in the constituencies affected by the recommendation, (b) a body of one hundred or more persons whose names are shown on the current electoral rolls of the constituencies in question.

[94] Thereafter, the respondent shall hold a local inquiry in respect of those constituencies.

[95] When all the above provisions in the Federal Constitution are read as a whole, it is clear that under art 114, it is the right of the citizen voters to elect representatives to the House of Representatives or State Legislative Assembly through the casting of the ballot, which is a hall mark of democracy, is a constitutional right. The respondent is entrusted with a public duty to ensure that in carrying out constituencies review exercise, the principles laid down in s 2 of Thirteenth Schedule must be complied with as far as possible. Implicit in ss 5(a) and (b) of Part II of Thirteenth Schedule is the right of the public who are affected by the proposed recommendation to make representation to the respondent and to be heard in local inquiry, thus participating in the constituencies review process.

[96] It is thus clear that the intention of the drafter of the constitution in requiring the publication of s 4 notice in a constituency is to bring to the knowledge of the public and the registered voters that the respondent have undertaken constituencies review exercise under cl 2 of art 113 and they are provisionally determined to make recommendation and the effect of their proposed recommendation. Thus, the public who find themselves affected by the proposed recommendation could then exercise their right to make representation to the respondent within one month from the date of publication.

[97] Harken to the words that a constitution is a living piece of legislation, its' provisions must be construed broadly and not in pedantic way — with less rigidity and more generously with other Acts — so as to give effect to the fundamental rights and freedom. I am of the view that in order for the public or registered voters mentioned in s 5(a) and (b) of the Thirteenth Schedule to effectively exercise their constitutional right to make representation and to be heard in a local inquiry, s 4(a) of the Thirteenth Schedule must be complied with not just verbatim. The s 4 notice must communicate to the public the effect of the proposed recommendation. In other words, s 4 notice must disclose detailed particulars to show the effect of the proposed recommendation that would enable the public to know whether they are adversely affected by the proposed recommendation, and whether they have locus standi to make representation. In the case of individual voters, they need

to look for other 99 voters whose names appear in the current electoral roll of the constituency in question in order to constitute a body of 100 persons to make a representation to the respondent.

[98] Few could gainsay that it is time consuming to look for the other 99 affected voters whose names are in the current electoral rolls of the constituency in question. Firstly, it is essential to get hold of a copy of electoral rolls (which, according to the first applicant's unchallenged averment in para 34.2 of encl 3, is not free of charge). After getting hold of a copy of the electoral roll, he has to single out all the polling districts allocated for his constituency to have an idea who are his fellow constituents and to look for and get 99 others to constitute a body to submit a representation.

[99] Any unnecessary obstacles in getting to know the effect of the proposed recommendation may cause delay in organising 100 people to submit representation which could not be submitted within the stipulated one month period. As a result the right to make representation and to be heard in the local inquiry would be made ineffective and illusory.

[100] Further, any unnecessary obstacles in getting to know the effect of the proposed recommendation may make it difficult for the public, especially lay registered voter in preparing the representation properly so that it would not be rejected even before it is heard. Thus, rendering his right to make representation and be heard in local inquiry illusory, and not effectual.

[101] By reason of the above, the s 4 notice must disclose detailed particulars to show the effect of the proposed recommendation. In this connection, the respondent should publish at least the proposed electoral roll, the exhaustive list of changes to the parliamentary and state constituencies, the polling station districts on the map, the administrative, physical and infrastructural boundaries on the map, the electorate size and the land mass of proposed constituencies. Without disclosure of such detailed particulars, the voters of the constituencies would not be able to know if any polling district boundary have been changed and in what manner; how many of the polling districts have been moved between the state constituencies and how many state constituencies have been moved between the parliamentary constituencies, which constituency they are placed with, who are they sharing the constituency with and whether the principles in s 2 of the Thirteenth Schedule are complied with.

[102] I am mindful of the senior federal counsel's submission that there is no necessity to include in the notice the detailed particulars mentioned in the foregoing paragraph because on matter such as these can be checked at the places specified in the Third Schedule of the notice. Registered voters who are

interested can check at the places specified.

[103] The question to be asked is whether the information in the draft constituencies plan, or for that matter, in exh SCH4, disclosed detailed particulars of the proposed recommendation to show the effect of the proposed recommendation.

[104] In this respect, it is pertinent to refer to the first applicant's averment in encl 4 as follows:

(a) that there is a copy of a booklet at the counter of the Pejabat Pilihan Raya Negeri Sarawak, entitled 'Syor-syor yang dicadangkan bagi Bahagian-Bahagian Pilihan Raya Persekutuan dan Negeri di dalam Negeri Sarawak sebagai mana yang telah Dikaji Semula oleh Suruhanjaya Pilihan Raya dalam Tahun 2014' ('Proposed Recommendation for Federal and State Constituencies in the State of Sarawak as Reviewed by the Election Commission in 2014' dated and/or *gazetted* on 23 December 2014') (exh 'SCH4'). Exhibit 'SCH4' contained the notice, the First Schedule, the Second Schedule and the Third Schedule, all mentioned in the *New Sarawak Tribune* and *Utusan Sarawak* newspaper (para 23);

(b) that there is a great discrepancy in the Second Schedule that was *gazetted* and published in the *New Sarawak Tribune* and '*Utusan Sarawak*' newspaper, as shown in the notice and the one that is shown exh SCH4 (para 23.1);

(c) the Second Schedule that was in the notice as published in the two newspapers only displayed and listed the total number of voters in each State and Federal Constituencies in Sarawak, whereas the Second Schedule in exh SCH4 displayed and listed the total number of voters in the respective polling districts in each State and Federal Constituencies in the Sarawak (para 23.2);

(d) that the respondent have so far provided only two pieces of information as 'detailed particulars of the proposed recommendation' to the public, namely, (1) a draft Constituencies Plan for the State of Sarawak as mentioned in para 6 of the notice, being proposed sub-division of 31 Parliamentary Constituencies and 82 State Constituencies and (2) the list of electorate breakdown by parliamentary constituency, state constituency and polling district, as shown in the notice and exh SCH4 (para 32);

(e) that the two pieces of information as 'detailed particulars' are inadequate and/or ineffective to publish and/or disclose the effects of the proposed recommendation (para 32.1);

(f) as the notice and exh SCH4 stated that the total number of voters in the electoral roll which was endorsed and *gazetted* on 30 April 2014 was used for the purpose of the review of the delimitation of the Federal and State Constituencies in the State of Sarawak, the first applicant purchased a compact disk costing RM4,531.20 purportedly containing the electoral rolls used for the purpose of the review of the delimitation of the Federal and State Constituencies in the State of Sarawak. After sorting out the data contained in the compact disk, the first applicant was of the view that there are many discrepancies and doubts in the detailed particulars revealed by the respondent (see, paras 26 and 27);

(g) three polling districts with 6,120 voters are proposed to be removed from the State Constituency of N11 Batu Lintang to N14 Batu Kawah (none of which was mentioned in the notice and exh SCH4). In the polling district of RPR Batu Kawah, there were 1,675 voters in the electoral rolls *gazetted* on 30 April 2014. However, the number of voters listed under the polling district of RPR Batu Kawah in the proposed recommendation of the Election Commission (shown at p 11 of exh SCH4) is only 204 voters. For two other polling districts being moved from the constituency of Batu Lintang to RPR Batu Kawah, namely 'Maong' and 'Nanas Pisang', the electoral roll *gazetted* on 30 April 2014 showed them having 1,570 and 2,986 voters, but the figures in the proposed recommendation for Batu Kawah showed 1,577 and 2,021. Because of the huge difference in the number of voters in the polling districts, none of the voters in the affected polling district would know whether they are being moved to another electoral constituency. The same anomaly is shown in almost all the polling districts which are being shifted, shuffled and/or redistributed (para 8);

(h) that the compact disk which contained the electoral rolls which was *gazetted* on 30 April 2014 which was used for the purpose of delimitation review exercise contained 1,111,393 names, whereas the total number of voters as published to be involved in this review (as shown on p 75 of exh SCH4) is 1,109,134, a difference of 2,259 voters (para 30);

(i) there is nothing in the detailed particulars of the proposed recommendation to reflect that the principles as specified in cl 2 of the Thirteenth Schedule of the Federal Constitution and required to be taken into account in dividing any unit of review into constitutions had been taken into account (para 31);

(j) the respondent's proposed recommendations have divided Sarawak into 887 polling districts, 82 state constituencies and 31 parliamentary constituencies. The number of polling districts, when compared to those in the 13th General Election held in 2013 of 861 polling districts, showed an increase of 26 polling districts. This would mean that 26 or more of the existing polling districts would be split up. Such information

was not mentioned in the notice and SCH4 (para 33.2);

(k) the electoral rolls endorsed on 30th April 2014 which was used for the delineation, delimitation and/or redelineation exercise were produced from 71 State Constituencies. The said electoral rolls are not readily available for public scrutiny on the proposed recommendation as the total number of state constituencies have been increased to 82 (para 34.1);

(l) in the event that a voter got hold of a copy of the electoral roll (which is not free of charge), he or she would need to single out all the polling districts allocated for his or her new constituency to have an idea who are his or her fellow constituents and to decide whether that suits his or her best interest and if he or she needs to organise/get 99 others to file an objection (para 34.2);

(m) the draft constituency plan did not show the locations of the 887 polling districts that came into existence from the proposed recommendation. The number of polling districts that appeared in the electoral maps of 2013 was stated to be 769. There is a discrepancy of 118 polling districts (para 35);

(n) the discrepancy of 118 polling districts cannot be located in the draft constituency plan. By referring to the electoral map of 2013 and comparing it with the 118 polling districts in the proposed recommendation, 29 polling districts were found to be new and the remaining 89 polling districts could not be found therein (para 35.1);

(o) this additional 118 polling districts are scattered in 20 State Constituencies and 15 Parliamentary Constituencies, involving a total of 64,451 voters. They make up 24.62% of the State Constituency electorates combined and 12.02% of the parliamentary electorates combined. The worst case of suspected gerrymandering is in the proposed new Federal Constituency of Puncak Borneo (presently known as Mambong) where as many as 65.28% of the voters are listed under the 71 missing polling districts. In one of its State Constituency, N20 Tarat, as many as 11,893 voters (72.63% of its total 16,374 electorates) cannot be located on the electoral map (para 35.2);

(p) with regard to the polling district of RPR Batu Kawah (which is an existing polling district in the existing Federal Constituency of Stampin and the existing State Constituency of Batu Lintang), there are 1,675 voters stated in the electoral rolls *gazetted* on 30th April 2014. However, the polling districts of RPR Batu Kawah has been proposed to be moved to the State Constituency of Batu Kawah, the number of voters listed under the polling district of RPR Batu Kawah (shown on p 11 of exh SCH4) is only 204 voters. Thus, 1,471 voters are unaccounted for (para 35.3);

(q) for the two other polling districts being moved from the State Constituency of Batu Lintang to Batu Kawah, namely 'Maong' and 'Nanas Pisang', the electoral rolls *gazetted* on 30 April 2014 showed them having 1,570 and 2,986 voters therein, but the figures in the proposed recommendation for Batu Kawah showed 1,577 and 2,021. A total of 965 voters in the polling districts of Nanas Pisang are unaccounted for (para 35.3);

(r) there is the multiplying effect of ballot value in the electoral constituencies. The existing P198 Mambong is subdivided into N16 Bengoh (24,655 voters in the previous general election held in 2014) and N17 Tarat (17,689 voters) with a total of 42,344 voters. The electoral rolls *gazetted* on 30 April 2014 used for the delimitation review exercise suggested an increase of 510 voters to 42,854. The constituency review proposal basically splits N16 Bengoh into the new/proposed N18 Serembu (9,677 voters) and N19 Mambong (16,803 votes), while Tarat shrinks slightly to 16,374 voters. This means the ballot value for the original N16 Bengoh voters increased by two-fold. Those voters in the new/proposed N18 Serembu have their vote values increased by nearly 150% as compared to the time of the previous general election held in 2013 (para 36.1);

(s) there is mala apportionment of constituencies at State wide level. The existing Federal Constituency of Mambong (proposed to be named Puncak Borneo) is internally mala apportioned. In 2013, Bengoh was 50% larger than Tarat and now Tarat and Mambong are proposed to be nearly twice the size of Serembu. Yet there are many areas in the proposed Tarat and Mambong State Constituencies which are more remote than those areas under the proposed Serembu State Constituency, see para 36.2; and

(t) there is withholding of the publication of the land mass in the present constituency review exercise. This important information is 'conventionally' published by the respondent in its report to Parliament. Land mass is important in assessing transportation and communication difficulties, which is a constitutional ground to justify exception to the 'approximately equal' requirement in cl 2(c) of Thirteenth Schedule. A copy of the land mass report was actually included in the respondent's report on Federal Constituencies and State Constituencies delimitation and/or constituencies review exercise on 17 January 2005 (exh SCH5 pp 52–55; para 36.3).

[105] From the foregoing averments, even the information in the detailed particulars in the Constituencies Plan for the State of Sarawak and a list of electorate breakdown by Parliamentary Constituency, State Constituency and polling district as shown in exh SCH4 are inadequate as they do not disclose

the list of changes to the parliamentary and state constituencies such as details of the changes in polling districts, proposed electoral rolls, boundaries of polling districts, electorate size and land mass of the proposed constituencies.

[106] As such, the inspection of exh SCH4 together with the draft constituencies plan for the State of Sarawak at the places specified in the Third Schedule would not assist the public and the registered voters to know if the boundary of any polling district had been changed or how many polling districts have been moved between state constituencies or how many state constituencies have been moved between parliamentary constituencies; whether the principles in s 2 are being complied with. As such, they would not know whether they have been adversely affected and have locus standi to make representation.

[107] It cannot be gainsaid that when the respondent undertake a constituencies review exercise, they are performing a public duty to ensure that it is carried out in accordance with the principles listed out in s 2 of the Thirteenth Schedule and to ensure that public bodies and the registered voters can exercise their right to make representation to the respondent should they find themselves adversely affected by the proposed recommendation. In this connection, it is therefore an integral part of the public duty of the respondent to disclose an exhaustive list of changes to the parliamentary and state constituencies which include details of the changes to the polling districts, proposed electoral rolls, boundaries of polling districts, electorate size and land mass of the proposed constituencies in the notice and in the draft constituency plan. If, for any reason, these detailed particulars cannot be published due to sheer size, then such information should be readily made available, free of charge, for inspection at the specified places.

[108] The first applicant averred that the previous federal constituencies and state constituencies delimitation and/or constituencies review exercise that was commenced on 17 January 2005 and carried out by the respondent (exh SCH5) showed the detailed particulars of the proposed recommendation for the State of Sarawak regarding the following:

(a) the new Federal and State Constituencies in the State of Sarawak were specified in the First Schedule (pp 102–109);

(b) the overall Federal and State Constituencies, the State of Sarawak were specified in the Second Schedule (pp 110–146); and

(c) the then existing Federal and State Constituencies in the State of Sarawak were specified in the Third Schedule (pp 147–152).

[109] It is observed that the particulars in the First Schedule appearing at pp 102–109 of exh SCH5 were more detailed and clear, compared with those in

the First Schedule appearing in the notice and exh SCH4. In the Second Schedule of exh SCH5, for all the Federal and State Constituencies, it listed the code number of the 'Existing Code No' (*Nombor Kod Sekarang*) and 'Proposed/Recommended Code No' (*Nombor Kod yang Dicadangkan*) federal constituency, state constituency and polling district.

[110] The senior federal counsel submitted that the detailed particulars as disclosed in exh SCH5 were the report done after the local enquiry.

[111] Section 7 of the Thirteenth Schedule provides:

> Where the Election Commission revise any proposed recommendations after publishing a notice thereof under section 4, the Commission shall comply again with that section in relation to the revised recommendations, as if no earlier notice had been published ...

[112] It cannot be gainsaid that when the respondent published the s 4 notice notifying that the respondent is provisionally determined to make the proposed recommendation under art 113 affecting any constituency, they would already have the list of changes to the parliamentary and state constituencies such as details of the changes in polling districts, proposed electoral rolls, boundaries of polling districts, electorate size and land mass of the proposed constituencies. Indeed, in the event there is no representation to object the proposed recommendation, the respondent would proceed to include in the report the recommendations. As such, there is no reason why the respondent should keep these detailed particulars which would help the public and the registered voters to know the effect of the proposed recommendation and how they may thereby be affected.

[113] With reference to the learned senior federal counsel's submission that the effect of the notice resulted in 64 representations received by the respondent and that the grounds of objection to the proposed recommendation were clearly stated in these representations, it is my view that the fact that the respondent had received 64 representations does not negate the responsibility of the Election Commission to disclose detailed particulars to show the effect of the proposed recommendation and it should not be used as an excuse or reason to dilute the legitimate expectation of the public and the registered voters to know the effect of the proposed recommendation.

THE COURT'S DECISION ON GROUNDS NOS 4, 5, 6, 7

[114] For all the reasons given above, I am of the view that the notice, the detailed particulars of the proposed recommendation disclosed in the First Schedule and the Second Schedule annexed to the notice and the draft constituency plan do not show the effect of the proposed recommendation.

Thus it is not in compliance with s 4 of the Thirteenth Schedule of the Federal Constitution.

GROUNDS NO 8 AND 9

[115] I have earlier referred to the averment of the first applicant with regards to the discrepancies and doubts in the detailed particulars revealed by the respondent.

[116] Those averments of the first applicant are not traversed by the respondent in the affidavit in opposition affirmed by the chairman of the respondent in encl 18 other than general denials. This general traverse is insufficient in the face of positive assertion, see *Sarawak Biscuit & Food Manufacture Sdn Bhd & Anor v Khidmat Edar (M) Sdn Bhd* [2000] MLJU 34.

[117] Learned senior federal counsel submitted that these discrepancies could be addressed and explained in the inquiry.

[118] Be that it as it may, when the serious substantial lacking of detailed particulars to show the effect of the proposed recommendation as referred to above is viewed together with the discrepancies averred by the first applicant, it showed that the respondent is keeping such information from public knowledge deliberately and has acted mala fide.

CONCLUSION

[119] For the reasons given above, I make the following orders:

(a) no declaration on (a);

(b) no declaration on (b);

(c) a declaration that there is serious and considerable lacking in detailed particulars of the proposed recommendations purportedly disclosed and specified in the First Schedule, Second Schedule (both annexed to the notice published pursuant to cl 4 of the Thirteenth Schedule) and the draft constituency plan which were open for inspection from 5 January 2015 up to and including 4 February 2015 at the places specified in the Third Schedule annexed to the notice published pursuant to cl 4 of the Thirteenth Schedule;

(d) that the publication of the notice of the proposed recommendation to review the division of the State of Sarawak into constituencies for the purpose of election to the Sarawak State Legislative Assembly was not in compliance with s 4 of the Thirteenth Schedule of the Federal Constitution and is therefore null and void and of no effect;

(e) a mandatory order directing that the Election Commission republishes a notice of its proposed recommendations to review the division of the State of Sarawak into constituencies for the purpose of elections to the Sarawak State Legislative Assembly in full compliance with the provisions contained in the Thirteenth Schedule; and

(f) no order as to costs.

Order accordingly.

Reported by Afiq Mohamad